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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,671	02/15/2002	Pierfrancesco D'Agri	3410-35	7708
7590	03/02/2005		EXAMINER	
Nixon & Vanderhye 8th Floor 1100 North Glebe Road Arlington, VA 22201-4714			PENDLETON, BRIAN T	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/049,671	D'AGRI, PIERFRANCESCO	
	<b>Examiner</b> Brian T. Pendleton	<b>Art Unit</b> 2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 February 2002.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3,8,9,11 and 12 is/are rejected.  
 7) Claim(s) 4-7 and 10 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 15 February 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under ~~35 U.S.C. 102(e)~~ as being anticipated by Bindner et al, US

Patent 6,574,340. Bindner discloses a hearing aid fitting system comprising computer 16 having a central processing unit, a hearing aid 10, programming device 14 which serves as a hearing aid adapter, an user interface (keyboard 20, mouse 22), display unit 18 having an inherent speaker, and an inherent memory unit for storing data, multi-media files and a hearing aid setting program.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bindner in view of Platt, US Patent 5,226,086. Bindner does not disclose that the computer system comprises a port for connection to a telephone line with a direct link via the telephone line to the

Internet and a central unit situated in at least one hearing aid dispensing center. Platt discloses a method and apparatus for programming a hearing aid comprising a central office 16 having a computer 26 and modem 24, and a plurality of remote location having hearing aids 30, interface units 20, auditory characteristics 42 and modem 22. As disclosed in column 4 lines 45-62, the reference provides for the programming of the hearing aid by determining the auditory characteristics of the user at a remote location, transmitting those characteristics to a central location, receiving auditory parameters and programming the hearing aid accordingly. Thus, Platt disclosed having a port for connection to a telephone line, the telephone line having a direct link to a central unit (computer 26) at a hearing aid dispensing center. Obviously, one of ordinary skill in the art would incorporate an Internet connection at the time of invention to provide additional connections to central locations. The advantage of the Platt invention was to reduce cost by having a centralized computing system that accomplishes the task of matching the user's audiological response to a fitted hearing aid without having a plurality of computing systems at individual locations. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to implement the telephone connection system of Platt in the invention of Bindner for the purpose of reducing the cost of processing audiometric results.

Claims 8, 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basseas, Patent Application Publication US 2004/0141626 in view of Bindner et al. Basseas discloses a programmable hearing aid that accomplishes an audiometric examination and supplies the data (audiometric data 1) to a neural network 4. Other patient data 2 is also supplied to the neural network 4. The choice of hearing aid is done by hearing aid parameter settings 6 and programming of the hearing aid is done by programmer 7 in figure 1. Basseas does not

explicitly disclose a first interaction between the hearing aid fitter and patient to study the patient from an auditory and psychological viewpoint with the aid of multimedia recordings and questionnaires and data depicting the patient's subjective hearing status being obtained and used by the hearing aid parameter settings 6. However, it was well known to administer subjective hearing tests to an user for determining the parameters of a hearing aid, as evidenced by Bindner. In figures 2 and 3 are example of interactions between a hearing aid fitter and patient that result in data depicting a patient's subjective hearing status. It was advantageous to generate such data as it improved the fitting of the hearing aid. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include the subjective hearing status data derivation method of Bindner in the invention of Basseas as other patient data for the purpose of improving the likelihood of a perfect hearing aid fitting for the patient. Claim 8 is met. As to claim 9, paragraph 0013 of Basseas discloses a fine-tuning process that sets different target levels based on user response to sound stimuli in an attempt to recalibrate the hearing aid. Per claim 11, see figure 3 of Bindner. As to claim 12, it was obvious that a hearing aid professional would check the response of a patient to subjective hearing tests in order to correctly program a hearing aid.

***Allowable Subject Matter***

Claims 4-7 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Pendleton whose telephone number is (703) 305-9509. The examiner can normally be reached on M-F 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (703) 305-4040. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brian T. Pendleton  
Examiner  
Art Unit 2644

